

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20054

MAR 25 1997

In the Matter of )  
 )  
Amendment of the Commission's )  
Rules to Establish Part 27, the ) GN Docket No. 96-228  
Wireless Communications Service )  
(WCS) )  
  
To: The Commission

**REPLY COMMENTS OF UNITED STATES WIRELESS CABLE, INC.  
IN SUPPORT OF WCA'S PETITION FOR EXPEDITED RECONSIDERATION**

United States Wireless Cable, Inc. ("U.S. Wireless") through counsel, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits comments in support of Wireless Cable Association International, Inc.'s ("WCA") Petition for Expedited Reconsideration of the Report & Order in the above captioned proceeding.<sup>1/</sup>

**I. Introduction**

U.S. Wireless, is a wireless cable operator which, through its subsidiary United States Wireless Systems, Inc., provides successful, commercial video service in Brownsville and Victoria, Texas, among other markets. U.S. Wireless is also the holder of the Brownsville and Victoria MDS BTA authorizations, for which U.S. Wireless committed to pay approximately \$138,000 in the MDS

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<sup>1/</sup> In the Matter of Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), GN Docket No. 96-228, FCC 97-50, adopted February 19, 1997 ("Report & Order").

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auction. U.S. Wireless also leases channel capacity from MDS and ITFS licensees and holds several MDS licenses. Accordingly, U.S. Wireless has a significant and on-going interest in the rules adopted for the Wireless Communications Services ("WCS"), as those Rules impact MDS and ITFS service.

II. Wireless Cable Must Maintain Signal Quality to Provide Effective Competition To Franchised Cable.

In order to operate a wireless cable system able to compete with wired cable and DBS, it is imperative to have a quality signal, free of harmful interference. Time and time again, the FCC has recognized the potential for MDS to be a viable competitive alternative to wired cable and other multichannel video programming distributors.<sup>2/</sup> To adopt rules that would diminish the growth and development of wireless cable systems would be against long standing policy.

In addition, the 1996 Telecommunications Act deregulates franchised cable where effective competition exists. Congress intended for the Commission to promote, rather than impede new video competitors such as wireless cable. Spectrum auctions must be conducted in a manner that is consistent with the primary focus of encouraging competition. For example, the FCC has restricted eligibility in the LMDS auctions in order to promote new LMDS entrants, even though less revenue may be collected.

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<sup>2/</sup> See e.g. Implementation of Section 309(j) of the Communications Act, Competitive Bidding, PP Docket No. 93-253, 10 FCC Rcd 9589, 9590 ((1995)).

In its Petition, WCA submits engineering data which shows that operation of WCS facilities at excessive power will cause destructive blanketing interference to MDS and ITFS licensees. Therefore, unrestricted use of the proposed auctioned frequencies would adversely affect wireless cable, contrary to congressional and FCC policy. Based upon this evidence of record, the Commission should impose a power limitation of 20 watts EIRP on WCS licensees prior to the commencement of the WCS auction.

III. The Record Now Contains Sufficient Evidence To Act.

In the Report & Order, which adopted the WCS rules, the FCC determined that the record did not contain sufficient evidence necessary to impose any technical restriction on WCS licensees aimed at protecting the MDS/ITFS services. Report & Order at ¶157.

In response to the FCC's decision not to impose power limitations, on March 20, 1997, WCA submitted a Petition for Expedited Reconsideration ("Petition") and Motion for Stay to request that the FCC reconsider this decision and impose a 20 watt EIRP power limitation on WCS operations. Petition at 1. In support thereof, WCA submitted an Engineering Statement of T. Lauriston Hardin, P.E., Chairman of the Engineering Committee of WCA, who reviewed the potential interference problems which would result from WCS operations.

Pursuant to this study, Mr. Hardin concludes that under the FCC's rules as adopted, "WCS can cause significant interference to the operations of MDS and ITFS systems throughout the

country." Statement at 1. The WCA petition and Engineering Statement show that, without the power limitation, ITFS/MDS operations will potentially receive destructive blanketing interference from WCS operations. Id.

U.S. Wireless employs Hardin & Assoc. as its consulting engineers and has done so since the inception of the wireless cable service. Accordingly, based upon years of experience with Hardin & Assoc., U.S. Wireless takes extremely seriously their conclusion that U.S. Wireless may suffer harmful interference if the FCC fails to act.

Based upon Hardin's Statement, the FCC now has sufficient evidence in the record to adopt the requested restriction. Also, no evidence exists to challenge the finding of Hardin & Assoc., and a decision by the Commission not to impose the power restriction would lack any supporting evidence and would be contrary to the Administrative Procedures Act, as well as the 1996 Telecommunications Act.

#### IV. The Commission's Reliance Upon Digital Conversion Is Erroneous.

The FCC based its decision, in part, on the assumption that wireless cable operators are converting to digital operations: "We are aware that the MDS/ITFS industry is converting to newer, more robustly designed downconverters that have vastly improved frequency selectivity and would not receive WCS signals." Report & Order at ¶157. This conclusion is erroneous for two reasons.

First, digital conversion is permitted, but not required under the FCC's declaratory ruling. U.S. Wireless, like many

other wireless cable operators, has no immediate plans to convert its systems from analog to digital operations. The cost of digital conversion cannot be justified in smaller markets such as those in which U.S. Wireless operates. Digital systems are not yet in operation, not even Pactel's proposed Los Angeles system, a major market system with a major commercial sponsor. The Commission must be aware that wireless cable stocks have suffered a substantial decline in value and financing for digital conversion is difficult. Consequently, without conversion to digital and replacement of downconverters, the FCC has concluded that MDS/ITFS systems will receive interference from WCS operations.

Secondly, even if digital conversion was economically viable immediately, which it is not, Hardin concludes that the assumption of the FCC is incorrect. The FCC reasoned the requested power is not necessary because "the MDS/ITFS industry is converting to newer, more robust designed downconverters that have vastly improved frequency selectivity and would not receive WCS signals." Id. However, Mr. Hardin further found that "it is impossible for the manufacturers of MDS and ITFS equipment to develop equipment which can mitigate this WCS interference due to the lack of power limitation on the WCS." Statement at 1.

Therefore, the evidence of record fails to support and, in fact, directly contradicts the Commission's assumption. Digital conversion is not the answer to the WCS interference problem

because it will not work and it is too expensive for most wireless operators in the short term.

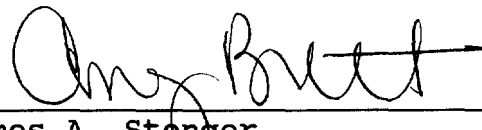
U.S. Wireless agrees with WCA that the FCC should not wait to adopt interference protection rules until "sometime in the future." Report & Order at ¶157. The potential for blanketing interference would result in the loss of quality of service and the loss of customers which would not be recoverable, even if the FCC decides to adopt interference rules later.

**Conclusion**

For the reasons set forth herein, U.S. Wireless supports WCA's request that the FCC modify its Rules contained in the Report & Order to limit the authorized power of WCS licensees to 20 watts EIRP, thereby sufficiently protecting MDS/ITFS operations from receiving harmful interference from WCS operations.

Respectfully submitted,

UNITED STATES WIRELESS CABLE, INC.



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March 25, 1997

**CERTIFICATE OF SERVICE**

I, Magdalene Copp, a secretary of the law office of Ross & Hardies, do hereby certify that I have this 25th day of March 1997, served by first-class mail, postage pre-paid, a copy of the foregoing "Reply Comments of United States Wireless Cable, Inc. in Support of WCA's Petition for Expedited Reconsideration" to:

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